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8 ERIC OLSON,  
9 Plaintiff,  
10 v.  
11 WORLD FINANCIAL GROUP  
INSURANCE AGENCY, LLC, et al.,  
12 Defendants.

Case No. 24-cv-00481-EJD  
**ORDER GRANTING IN PART  
MOTION TO COMPEL  
ARBITRATION**

Re: ECF No. 31

14 Plaintiff Eric Olson (“Mr. Olson”) brings claims against Defendants World Financial  
15 Group Insurance (“WFG,” “WFGIA,” or “Defendant”), Robbie Day, and DOES 1-10 for  
16 damages, injunctive relief, and declaratory relief relating broadly to Mr. Olson’s prior affiliation  
17 with WFG. First Amended Complaint (“FAC”), ECF No. 27-1.

18 Before the Court is WFG’s motion to compel Mr. Olson’s claims to arbitration. WFG’s  
19 Motion to Compel Arbitration (“Mot.” or “Motion”), ECF No. 31. The motion is fully briefed.  
20 Mr. Olson’s Opposition to Motion to Compel Arbitration (“Opp.”), ECF No. 39; WFG’s Reply in  
21 Support of Motion to Compel Arbitration (“Reply”), ECF No. 43. The Court heard oral argument  
22 on the motion on May 2, 2024.

23 For the reasons set forth below, the Court GRANTS IN PART WFG’s motion.

24 **I. BACKGROUND**

25 **A. The Parties**

26 The following factual background is taken from the complaint except if otherwise noted.  
27 WFG is a multi-level marketing company that provides financial services via life insurance,

1 retirement strategies, and a variety of wealth-building strategies. FAC ¶ 16. When an agent signs  
2 on to become affiliated with WFG, they are encouraged to recruit additional agents, and they are  
3 compensated for sales of their recruits and any sales by any agent that is brought on by that recruit.  
4 *Id.* ¶ 17. In or about 2003, Mr. Olson became affiliated with WFG and started to recruit agents.  
5 *Id.* ¶ 20. Mr. Olson was very successful in building his teams. *Id.* ¶ 30. Mr. Olson signed an  
6 agreement with WFG (“the Agent Agreement”) which included multiple provisions that Mr. Olson  
7 contends are against California law. *Id.* ¶¶ 6, 20.

8 Around 2023, Mr. Olson “contemplated transferring his code” to Ms. Olson such that  
9 Ms. Olson would “step into his shoes and be in control of his hierarchy and collect the revenues  
10 that Mr. Olson was generating from the sales of the agents that were in his hierarchy.” *Id.* ¶ 42.  
11 Mr. Olson alleges that WFG terminated the program that allowed this strategy shortly after  
12 learning that Mr. Olson intended to sell his code to Ms. Olson. *Id.* ¶ 44. Mr. Olson then sought to  
13 sell his code to another agent, but WFG purported to terminate this program as well. *Id.* ¶¶ 46, 48.

14 On January 22, 2024, Mr. Olson received a letter of termination from WFG warning  
15 Mr. Olson not to violate the provisions in the Agent Agreement. *Id.* ¶ 53. Mr. Olson alleges that  
16 WFG is using the provisions in the Agent Agreement to restrict Mr. Olson’s ability to work at a  
17 new business. *Id.* ¶ 61. WFG has allegedly failed to pay Mr. Olson approximately \$200,000 that  
18 is owed to him. *Id.* ¶ 63.

19 Ms. Olson resigned in October 2023 and started a new company, Global Financial Impact,  
20 LLC (“GFI”) to sell life insurance and other similar products. *Id.* ¶¶ 66–67. Mr. Olson alleges  
21 that Defendant Day and WFG “began mobilizing agents” to prevent WFG agents from leaving to  
22 join GFI. *Id.* ¶ 69.

23 **B. The Arbitration Agreement**

24 On February 27, 2023, Mr. Olson and WFG executed the Arbitration Agreement.  
25 Declaration of Troy A. Valdez, Ex. 1 (“Arbitration Agreement”), ECF No. 31-1 at 3. The  
26 Arbitration Agreement states the following:

27 WFG and I agree to use binding arbitration as the means to resolve all disputes  
28 Case No.: 24-cv-00481-EJD  
ORDER GRANTING IN PART MOTION TO COMPEL ARBITRATION

1 that may arise out of or relate to my relationship with WFG, including, but not  
2 limited to, any determination of my classification as an independent contractor.  
3 WFG and I each waive and relinquish our respective rights to bring a claim  
4 against the other in court and this waiver will be equally binding on any person  
5 who represents or seeks to represent WFG or me in a lawsuit against the other in  
6 court.

7 WFG and I agree to submit any claim, dispute, and/or controversy against the  
8 other to binding arbitration under the Federal Arbitration Act (FAA). This  
9 includes any such claims against WFG's brands, concepts, affiliates, subsidiaries,  
10 parents, related entities, owners, directors, officers, managers, employees, or  
agents. WFG and I agree the FAA applies to this Agreement. WFG and I also  
agree the scope of this Agreement includes all disputes, whether based on tort,  
contractor, or statute, as allowable under applicable law. This includes any claims  
whether they be based on state or federal law or regulation, equitable law, or  
otherwise. However, WFG and I agree a court may grant interim (temporary or  
permanent) injunctive relief to preserve the status quo or to prevent material,  
imminent harm pending arbitration.

11 Arbitration Agreement §§ 2–3.

### 12 C. Procedural History

#### 13 1. The WFG Action

14 WFG brought the first of multiple complaints involving these parties on January 25, 2024.  
15 *World Fin. Group Ins. Agency v. Eric Olson*, No. 24-cv-00480-EJD (N.D. Cal.) (the “WFG  
16 Action”). WFG filed a complaint, originally in Santa Clara Superior Court, against the Olsons  
17 alleging that Mr. Olson breached his contract with WFG and misappropriated confidential  
18 business information. The complaint includes seven causes of action for (1) breach of contract,  
19 (2) tortious interference, (3) civil conspiracy, (4) fraud, (5) unjust enrichment, (6) conversion, and  
20 (7) unfair competition in violation of California Business and Professions Code Section 17200. In  
21 that complaint, WFG seeks injunctive relief, monetary damages, and attorneys’ fees and costs.

22 On January 26, 2024, Mr. Olson removed the case to this Court. On January 29, 2024,  
23 WFG filed a motion for temporary restraining order and a motion for expedited discovery. *WFG*  
24 *Action*, ECF No. 17. The Court denied the TRO in that case on February 22, 2024, and granted  
25 WFG’s request for expedited discovery. *WFG Action*, ECF No. 64.

26 On March 14, 2024, the Olsons filed a motion to dismiss. *WFG Action*, ECF Nos. 79, 80.

1                   **2.         The Sandra Olson/GFI Action**

2                   On January 25, 2024, Ms. Olson brought a complaint on behalf of herself and her  
3 company, GFI, alleging that her ability to compete with WFG was hampered by WFG's non-  
4 solicitation provision in the employment agreement she signed when she was employed with  
5 WFG. *Sandra Olson v. World Fin. Group Ins. Agency*, No. 24-cv-00477-EJD (N.D. Cal.) (the  
6 "Sandra Olson/GFI Action"). She and GFI bring claims for declaratory and injunctive relief,  
7 alleging that WFG violated Cal. Bus. & Prof. Code, § 17200. Ms. Olson and GFI also seek  
8 attorneys' fees and costs.

9                   WFG filed a motion to compel Ms. Olson's claims to arbitration on March 22, 2024,  
10 arguing that Ms. Olson signed a Mutual Agreement to Arbitrate Claims in 2023 which requires  
11 that the claims asserted in Ms. Olson's lawsuit be submitted to binding arbitration. On March 25,  
12 2024, WFG also filed a motion to dismiss GFI's claims for failure to state a claim. *Sandra*  
13 *Olson/GFI Action*, ECF No. 24.

14                   **3.         The Eric Olson Action**

15                   On January 26, 2024, Mr. Olson filed the present complaint against WFG bringing claims  
16 for (1) unfair competition in violation of Cal. Bus. & Prof. Code, § 17200, (2) tortious  
17 interference, (3) conversion, (4) breach of contract/covenant of good faith and fair dealing, and  
18 (5) declaratory relief. WFG filed the present motion to compel arbitration in on March 22, 2024.  
19 The motion is fully briefed.

20                   **II.      LEGAL STANDARD**

21                   The Federal Arbitration Act ("FAA") governs the Arbitration Agreement between the  
22 Parties. Arbitration Agreement § 1. The FAA declares "that a written agreement to arbitrate ...  
23 'shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity  
24 for the revocation of any contract,'" and thereby establishes a "liberal federal policy favoring  
25 arbitration." *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983)  
26 (quoting 9 U.S.C. § 2). When parties enter into an arbitration agreement, the FAA "leaves no  
27 place for the exercise of discretion by a district court, but instead mandates that district courts shall  
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1 direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been  
2 signed.” *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218 (1985). Any doubts regarding the  
3 scope of arbitrable issues should be resolved in favor of arbitration. *Green Tree Fin. Corp. v.*  
4 *Bazzle*, 539 U.S. 444, 452 (2003).

5 In determining whether to compel a party to arbitrate, the court must determine:  
6 “(1) whether a valid agreement to arbitrate exists and, if it does, (2) whether the agreement  
7 encompasses the dispute at issue.” *Kilgore v. KeyBank, Nat. Ass’n*, 718 F.3d 1052, 1058 (9th Cir.  
8 2013) (internal quotation marks and citation omitted). Once it is established that a valid  
9 agreement to arbitrate exists, the burden shifts to the party seeking to avoid arbitration to show  
10 that the agreement should not be enforced. *Green Tree Fin. Corp.-Alabama v. Randolph*, 531  
11 U.S. 79, 92 (2000).

### 12 III. DISCUSSION

13 WFG contends that Mr. Olson’s claims must be compelled to arbitration because the  
14 Arbitration Agreement is a valid, binding agreement that evidences a clear agreement to arbitrate,  
15 and the Arbitration Agreement covers the dispute. Mot. 5–7. Mr. Olson responds that (1) the  
16 Arbitration Agreement is unconscionable, (2) WFG has waived any right to arbitration, and  
17 (3) Mr. Olson’s requests for preliminary injunctive relief are exempt from arbitration. Opp. 8–19.  
18 Mr. Olson does not dispute that, if valid, the Arbitration Agreement would cover his claims, which  
19 “arise out of or relate to [his] relationship with WFG.” Arbitration Agreement § 2.

#### 20 A. Whether WFG Waived Its Right to Arbitrate

21 Like other contractual rights, arbitration agreements may be waived. *Armstrong v.*  
22 *Michaels Stores, Inc.*, 59 F.4th 1011, 1015 (9th Cir. 2023). “[T]he burden for establishing waiver  
23 of an arbitration agreement is the same as the burden for establishing waiver in any other  
24 contractual context.” *Id.* To prevail on a waiver claim, “the party asserting waiver must  
25 demonstrate: (1) knowledge of an existing right to compel arbitration and (2) intentional acts  
26 inconsistent with that existing right.” *Id.* “There is no concrete test to determine whether a party  
27 has engaged in acts inconsistent with its right to arbitrate”; instead, courts “consider the totality of  
28

1 the parties' actions." *Hill v. Xerox Bus. Servs., LLC*, 59 F.4th 457, 471 (9th Cir. 2023) (citation  
2 omitted). The party opposing arbitration need not establish prejudice. *Id.*

3 The parties agree that Mr. Olson satisfied the first prong, so the Court considers only  
4 whether Mr. Olson has established that WFG's intentional acts were inconsistent with its right to  
5 compel arbitration. The Court evaluates whether WFG's actions holistically "indicate a conscious  
6 decision ... to seek judicial judgment on the merits of the arbitrable claims, which would be  
7 inconsistent with a right to arbitrate." *Id.* (quotations omitted). Under Ninth Circuit precedent, "a  
8 party generally acts inconsistently with exercising the right to arbitrate when it (1) makes an  
9 intentional decision not to move to compel arbitration and (2) actively litigates the merits of a case  
10 for a prolonged period of time in order to take advantage of being in court." *Id.* (quotations  
11 omitted).

12 Mr. Olson argues that WFG has waived its right to arbitration by "affirmatively engag[ing]  
13 in substantive litigation against Mr. Olson in three courts, including suing Mr. Olson in this Court  
14 for compensatory and punitive damages based on the same events giving rise to this action." Opp.  
15. Specifically, Mr. Olson points out that WFG's initial complaint against the Olsons—the *WFG*  
16 *Action*—included claims for money damages and permanent injunctive relief without any mention  
17 of arbitration of WFG's arbitration provision. WFG then amended its complaint, again seeking  
18 money damages and injunctive relief against Mr. Olson. *WFG Action*, ECF No. 72.

19 WFG responds that it has not waived its right to arbitration because it has simply "engaged  
20 in limited litigation with the sole purpose of obtaining interim injunctive relief" which is  
21 "consistent with the [Arbitration] Agreement." Reply 12.

22 Turning the Arbitration Agreement, the relevant section states the following:

23 2. WFG and I agree the FAA applies to this Agreement. WFG and I also agree the  
24 scope of this Agreement includes all disputes, whether based on tort, contract, or  
25 statute, as allowable under applicable law. This includes any claims whether they  
be based on state or federal law or regulation, equitable law, or otherwise.

26 **However, WFG and I agree a court may grant interim (temporary or  
preliminary) injunctive relief to preserve the status quo or to prevent  
material, imminent harm pending arbitration.**

1 Arbitration Agreement, § 2 (emphasis added).

2 WFG contends it has engaged in “surface level litigation,” including seeking expedited  
3 discovery, aimed solely at obtaining the interim injunctive relief that the Arbitration Agreement  
4 allows. Reply 13. Moreover, WFG argues that it has consistently stated its intent to arbitration,  
5 including by notifying counsel on March 11, 2024, of its intent to move to compel arbitration  
6 (Declaration of Troy Valdez in Support of Reply, Ex. B, ECF No. 43-1), and alleging in its First  
7 Amended Complaint that “WFGIA brings its claims in this Court for the purpose of seeking  
8 injunctive relief to preserve the status quo and prevent imminent, irreparable harm, pending  
9 arbitration.” *WFG Action*, First Amended Complaint, ECF No. 72 ¶ 48.

10 In *Armstrong*, the Ninth Circuit found no waiver where the defendant pleaded arbitration  
11 as an affirmative defense and explicitly stated its intent to move to compel arbitration in multiple  
12 filings. *Armstrong*, 59 F.4th at 1015. The court also considered that the defendant “did not  
13 actively litigate the merits of the case for a prolonged period to take advantage of being in court”  
14 as evidenced by its decision to compel arbitration “within a year after [plaintiff] filed the  
15 complaint,” and despite engaging in “limiting discovery requests” where the “very limited  
16 requests” were “related at least in part to [plaintiff’s] non-arbitrable” claim. *Id.*

17 Here, the Court does not find that WFG’s filing of the *WFG Action* demonstrates that it  
18 acted inconsistently with exercising its right to arbitrate. The Arbitration Agreement explicitly  
19 provides that the parties agree “a court may grant interim (temporary or preliminary) injunctive  
20 relief … pending arbitration.” Arbitration Agreement § 2.

21 Although WFG did not wait for a prolonged period after filing the complaint prior to  
22 moving to compel, the timing and motivation of WFG’s motion gives the Court pause. WFG filed  
23 the *WFG Action* on January 25, 2024. That complaint was silent regarding any intent to arbitrate.  
24 The Court denied WFG’s motion for a temporary restraining order on February 22, 2024. WFG  
25 then amended its complaint on February 29, 2024, to include additional defendants, and to plead  
26 for the first time that it was seeking interim relief in this Court “pending arbitration.” WFG then  
27 moved to compel arbitration on March 22, 2024. The fact that WFG “did not actively litigate the

1 merits of the case for a prolonged period”—just under two months—weighs against finding  
2 waiver. *Armstrong*, 59 F.4th at 1015. However, in the short period of time between when WFG  
3 filed its initial complaint to when WFG first stated its intent to arbitrate in the amended complaint  
4 and moved to compel arbitration in this matter, it received a negative ruling on its TRO and  
5 engaged in limited discovery.

6 Nevertheless, under the holistic approach, the totality of WFG’s conduct does not  
7 demonstrate waiver. WFG waited under two months to move to compel arbitration. Although  
8 WFG did not limit its request in the original complaint to injunctive relief, it has not sought a  
9 ruling on the merits as to its claims. Rather, it filed a temporary restraining order—interim relief  
10 both parties concede is permitted under the Arbitration Agreement. The parties are actively  
11 engaged in expedited discovery for the limited purpose of supporting both sides’ request for  
12 injunctive relief. *Armstrong*, 59 F.4th at 1016 (defendant’s “limited discovery requests did not  
13 evince a decision to take advantage of the judicial forum”). And importantly, Mr. Olson has  
14 indicated he also intends to seek injunctive relief in this Court “as permitted by Section 2 of the  
15 Arbitration Agreement.” Opp. 19. Mr. Olson’s cited cases finding waiver are distinct because  
16 none appears to involve arbitration agreements that contained the explicit carveout for temporary  
17 relief present here. *See United Computer Sys., Inc. v. AT & T Corp.*, 298 F.3d 756, 765 (9th Cir.  
18 2002); *see also ConWest Res., Inc. v. Playtime Novelties, Inc.*, No. C 06-5304SBA, 2007 WL  
19 1288349, at \*4 (N.D. Cal. May 1, 2007); *see also Kelly v. Pub. Util. Dist. No. 2 of Grant Cnty.*,  
20 552 F. App’x 663 (9th Cir. 2014).

21 Accordingly, Mr. Olson has failed to establish that WFG acted inconsistently with  
22 exercising its right to arbitrate.

23 **B. Whether a Valid Agreement to Arbitrate Exists**

24 When assessing whether an arbitration agreement is enforceable, “generally applicable  
25 contract defenses, such as fraud, duress, or unconscionability, may be applied ... without  
26 contravening [the FAA].” *Heredia v. Sunrise Senior Living LLC*, No. 18-cv-00616-HSG, 2018  
27 WL 5734617, at \*2 (N.D. Cal. Oct. 31, 2018) (internal quotation marks omitted) (quoting

1     *Doctor's Assoc., Inc. v. Casarotto*, 517 U.S. 681, 687 (1996)). Thus, the “state-law principles that  
2 govern the formation of contracts” apply to this analysis. *Pokorny v. Quixtar, Inc.*, 601 F.3d 987,  
3 994 (9th Cir. 2010); *see also Reichert v. Rapid Invs., Inc.*, 56 F.4th 1220, 1227 (9th Cir. 2022)  
4 (stating that district courts apply “ordinary state-law principles that govern the formation of  
5 contracts” in analyzing arbitration agreements). Mr. Olson contends that the Arbitration  
6 Agreement is unenforceable because it is both procedurally and substantively unconscionable.  
7 Opp. 7, 9.

8                   **1.        *Yeomans***

9                  As an initial matter, Mr. Olson compares the Arbitration Agreement here to the agreement  
10 invalidated in a separate, wage and hour class action against WFG. *Yeomans v. World Fin. Grp.*  
11 *Ins. Agency, Inc.* (“*Yeomans I*”), 485 F. Supp. 3d 1168, 1191 (N.D. Cal. 2020), *aff'd sub nom.*  
12 *Yeomans v. World Fin. Grp. Ins. Agency, LLC* (“*Yeomans II*”), 2021 WL 5356537, \*1 (9th Cir.  
13 Nov. 17, 2021). The Ninth Circuit affirmed the district court’s finding that WFG’s agreement in  
14 that case was both substantively and procedurally unconscionable. *Yeomans II*, 2021 WL  
15 5356537 at \*1. The Ninth Circuit found that plaintiffs there showed that “there was surprise in the  
16 contracting process,” and “some of the terms were ‘unreasonably favorable’” to WFGIA, “the  
17 more powerful party.” *Id.* (citing *Pokorny*, 601 F.3d at 997).

18                  The arbitration agreement at issue in *Yeomans I & II* and the circumstances surrounding its  
19 formation are important here. First, the plaintiffs in *Yeomans* contended that they received only  
20 the signature page of the agreement and “never actually saw or received the entire [agreement] or  
21 the provision containing the arbitration agreement” and “they did not know they were signing or  
22 agreeing to the [arbitration agreement].” *Yeomans I*, 485 F. Supp. 3d at 1178. The court observed  
23 that the record supported this, and it was “not evident from the file that what was being signed was  
24 a full contract.” *Id.* at 1179. The court further distinguished situations where the full text of the  
25 arbitration agreement was readily available to the plaintiffs. *Id.* at 1181. However, the court  
26 concluded that at least four plaintiffs who completed the agreements on behalf of new recruits via  
27 DocuSign—which permits the user “clear opportunity to view all pages of the [agreement]”—and

1 who “continued work on behalf of Defendants” thereby “manifest[ing] acceptance of that  
2 agreement” agreed to the terms of the arbitration agreement. *Id.* at 1183 (finding WFG failed to  
3 demonstrate that one plaintiff had notice of the agreement where there were no allegations that he  
4 “never saw the full [agreement]”).

5 As to whether the agreement at issue in *Yeomans* was procedurally unconscionable, the  
6 court found that it was a contract of adhesion because applicants “had a stark choice: either sign  
7 the [agreement] as part of the sign-up packet, or reject the agreement and not take the job.” *Id.* at  
8 1185. The court also recognized “an element of surprise” because (1) the named plaintiff initially  
9 only received the signature page of the agreement, (2) the heading of the arbitration provision was  
10 “in single-spaced, small-type font,” (3) the “arbitration provisions use[d] undefined terms,” and  
11 (4) WFG did not provide a copy of the rules that would govern their arbitration proceedings. *Id.* at  
12 1185–86.

13 The court also found substantive unconscionability because of three aspects of the  
14 agreement. *First*, the agreement contained provisions that demonstrated the “one-sidedness” of  
15 arbitration because the provisions gave WFG “the option of circumventing the arbitration process  
16 for the claims they felt were important enough to them to go the extreme position of excluding  
17 themselves from arbitration for those claims, while requiring all employees to submit those very  
18 claims to the arbitration process.” *Id.* at 1187. *Second*, the agreement contained a mandatory  
19 attorney fee and cost provision because plaintiffs “assert[ed] causes of action under California  
20 Labor Code § 218.5(a), which contemplates imposition of attorneys’ fees on a losing plaintiff only  
21 where the court finds that the employee brought the court action in bad faith.” *Id.* at 1188 (the  
22 attorneys’ fees “provision undermines the balance of the risk of fee shifting prescribed by statute  
23 and can have a substantial chilling effect on plaintiffs seeking to vindicate their rights”). *Third*,  
24 the agreement’s “requirement to litigate all claims in the state of Georgia and to apply Georgia  
25 law” was found to be substantively unconscionable because it was “unduly one-sided such that it  
26 would serve as a deterrent to litigants who otherwise do not have the means to litigate in a foreign  
27 state.” *Id.*

1       The Court rejects Mr. Olson’s argument that *Yeomans* is dispositive and mandates a  
2 finding of unconscionability here. Since that case, WFG updated its Arbitration Agreement. The  
3 Arbitration Agreement is now presented separately from the broader Agent Agreement. It no  
4 longer includes a Georgia choice-of-law provision for “those operating in California,” and it is  
5 printed in larger font. Arbitration Agreement § 19. Unlike the plaintiffs in *Yeomans*, Mr. Olson  
6 does not dispute that he received the agreement, nor that he signed the Arbitration Agreement as  
7 an independent contractor. Thus, the Court does not find that *Yeomans I* and *Yeomans II* mandate  
8 denying WFG’s motion, and the Court will proceed to evaluate unconscionability.

9                   **2.     Unconscionability**

10          “Under California law, a contract must be both procedurally and substantively  
11 unconscionable to be rendered invalid,” and courts “utilize[ ] a sliding scale to determine  
12 unconscionability—greater substantive unconscionability may compensate for lesser procedural  
13 unconscionability.” *Chavarria v. Ralphs Grocery Co.*, 733 F.3d 916, 922 (9th Cir. 2013).  
14 Mr. Olson contends the Arbitration Agreement is both procedurally and substantively  
15 unconscionable.

16                  Procedural Unconscionability. “Procedural unconscionability concerns the manner in  
17 which the contract was negotiated and the respective circumstances of the parties at that time,  
18 focusing on the level of oppression and surprise involved in the agreement.” *Chavarria*, 733 F.3d  
19 at 922 (citing *Ferguson v. Countrywide Credit Indus., Inc.*, 298 F.3d 778, 783 (9th Cir. 2002) and  
20 *A & M Produce Co. v. FMC Corp.*, 186 Cal. Rptr. 114, 121–22 (Cal. Ct. App. 1982)). Oppression  
21 is measured by the weaker party’s absence of choice and unequal bargaining power that results in  
22 “no real negotiation.” *Id.* (internal quotation marks omitted) (quoting *A & M Produce*, 186 Cal.  
23 Rptr. at 122). Surprise is measured by “the extent to which the contract clearly discloses its terms  
24 as well as the reasonable expectations of the weaker party.” *Id.* (citing *Parada v. Super. Ct.*, 98  
25 Cal. Rptr. 3d 743, 757 (Cal. Ct. App. 2009)).

26          Mr. Olson argues that the Arbitration Agreement is procedurally unconscionable because  
27 (1) it is a contract of adhesion, (2) it is “oppressive” because it prevented “users” from shopping

1 around or meaningfully withholding consent before accepting the terms of the agreement, and  
2 (3) it is unfairly surprising because the Arbitration Agreement “is tucked away near the end of the  
3 packet, between financial and authorization forms.” Opp 7–9.

4 WFG responds that Mr. Olson was a party to the Arbitration Agreement “without any  
5 objection” for 20 years, and just because the agreement was “standardized in form” does not  
6 establish adhesion. Reply 3. The Court agrees with WFG. The “fact that the arbitration  
7 agreement is an adhesion contract does not render it automatically unenforceable as  
8 unconscionable. Courts have consistently held that the requirement to enter into an arbitration  
9 agreement is not a bar to its enforcement.” *Serafin v. Balco Properties Ltd., LLC*, 235 Cal. App.  
10 4th 165, 179 (2015). Instead, “[t]he procedural element focuses on two factors: oppression and  
11 surprise.” *Zullo v. Superior Court*, 197 Cal. App. 4th 477, 484 (2011) (internal citations omitted).  
12 Oppression “arises from an inequality of bargaining power which results in no real negotiation and  
13 an absence of meaningful choice,” and surprise “involves the extent to which the supposedly  
14 agreed-upon terms of the bargain are hidden in the prolix printed form drafted by the party seeking  
15 to enforce the disputed terms.” *Id.* (internal citations omitted).

16 With respect to whether the Arbitration Agreement was oppressive, Mr. Olson describes an  
17 inequality of bargaining power because WFG required agents to sign the agreement each year, and  
18 agents “who took too much time to consider that year’s new terms risked real pecuniary harm—as  
19 WFG suspended agents who were tardy in renewing their packet.” Opp. 9. Mr. Olson’s  
20 declaration states that he “understood” WFG would not negotiate with him. Declaration of Eric  
21 Olson ¶ 4, ECF No. 39-3. But beyond this conclusory statement, this understanding is otherwise  
22 unsupported and conflicts with other statements in the record which suggest Mr. Olson is a  
23 sophisticated businessperson capable of negotiating. *See, e.g.*, FAC ¶ 1 (Mr. Olson worked with  
24 WFG for twenty years and built a \$200 million per year insurance business comprise of over  
25 20,000 agents). Given Mr. Olson’s tenure with the company and without any evidence that  
26 Mr. Olson attempted to negotiate—or that WFG refused to entertain questions from Mr. Olson—the  
27 Court does not find that Mr. Olson has demonstrated an inequality of bargaining power such

1 that the Arbitration Agreement was oppressive. *See Streedharan v. Stanley Indus. & Auto., LLC,*  
2 No. 22-55999, 2023 WL 9067587, at \*3 (9th Cir. Jan. 4, 2023) (party opposing arbitration did not  
3 meet his burden to show procedural unconscionability where he “offer[ed] no evidence to show  
4 that he was ever *prevented* from negotiating” and instead where he “relie[d] solely on his  
5 subjective *perception* that he did not have the opportunity to negotiate any of the terms of the  
6 agreement”) (emphasis in original) (quotations omitted).

7 As to surprise, Mr. Olson analogizes to *Yeomans I*, which found surprise present where “a  
8 reader seeking to make sense of the arbitration provision would have to flip through a separate  
9 document in order to understand the extent to which they would be bound.” Opp. 8 (citing  
10 *Yeomans I*, 485 F. Supp. 3d at 1186). While recognizing that since *Yeomans I & II*, WFG  
11 separated the Arbitration Agreement out of the Agent Agreement into a standalone document,  
12 Mr. Olson still contends that the Arbitration Agreement’s terms are manipulated to obscure their  
13 significance because they are “tucked away near the end” of the Agent Agreement packet,  
14 “between financial authorization forms.” Opp. 9. The Court finds that the terms of the arbitration  
15 are not so “hidden” as to find surprise. In addition to relocating the arbitration provision into a  
16 standalone document titled “Mutual Agreement to Arbitrate Claims Agreement,” the new  
17 Arbitration Agreement at issue here required Mr. Olson to separately sign off on the terms and is  
18 presented with legible font size with emphasis using bolding and underlines. This is distinct from  
19 the agreement in *Yeomans*, which involved single-spaced, size 9-point font and which plaintiffs  
20 were not presented with the full agreement until when they recruited others. *Yeomans I*, 485 F.  
21 Supp. 3d at 1186 (finding surprise).

22 Accordingly, Mr. Olson has not demonstrated that the Arbitration Agreement is  
23 procedurally unconscionable. As noted above, under California law, “a contract must be both  
24 procedurally *and* substantively unconscionable to be rendered invalid.” *Chavarria*, 733 F.3d at  
25 922 (citing *Armendariz v. Found. Health Psychcare Servs., Inc.*, 6 P.3d 669, 690 (Cal. 2000))  
26 (emphasis added). “Absent any evidence of procedural unconscionability, [the Court] need not  
27 reach the issue of substantive unconscionability.” *Streedharan*, 2023 WL 9067587, at \*3.

1           **C. Prejudice**

2           Mr. Olson argues that WFG's motion should be denied for the separate, independent  
3 reason that "WFG is estopped from compelling arbitration because Mr. Olson would be prejudiced  
4 by WFG's inconsistent conduct if the motion were granted." Opp. 15. If WFG's motion is  
5 granted, Mr. Olson contends he would be forced to relitigate key issues in the case, including "the  
6 enforceability of WFG's Restrictive Covenants under § 16600." *Id.* at 18.

7           The Court finds that any purported prejudice does not defeat the Court's finding that a  
8 valid arbitration agreement exists, and the Arbitration Agreement covers the dispute. The Court's  
9 ruling on WFG's motion for temporary restraining order found that WFG had not established a  
10 likelihood of success on the merits based on the evidence presented at the time of the motion. And  
11 the expedited discovery taken to date is mutual; the Court understands that both parties intend to  
12 use the discovery in support of the parties' respective forthcoming requests for preliminary  
13 injunction.

14           **IV. CONCLUSION**

15           For the foregoing reasons, WFG's motion is GRANTED. In light of Mr. Olson's  
16 representations that he intends to seek preliminary injunctive relief, which both parties agree are  
17 exempt from the Arbitration Agreement, the Court sets a status conference on September 26,  
18 2024, at 10:00 a.m. The parties are ORDERED to submit a joint statement no later than August  
19 23, 2024, regarding their proposal on which claims should be sent to arbitration and which claims  
20 should remain in this Court pursuant to the Court's ruling above. The parties should also  
21 comment on the status of each side's intention to seek a preliminary injunction.

22           **IT IS SO ORDERED.**

23           Dated: July 19, 2024

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25             
26           EDWARD J. DAVILA  
27           United States District Judge